

WATER EASEMENT AMENDMENTS (HB73)

Resolving Conflict / Securing a Future

Where Did This Bill Come From?

The Executive Water Issues Task Force met this last summer and discussed the legal mechanisms that should exist to eliminate an easement when a canal or ditch is abandoned. A subcommittee was created which studied the issue and presented a proposed solution which the task force voted unanimously to support. This bill is the solution proposed.

What is the Background?

Many canals and ditches and other conveyance systems have been constructed over a long period in the state to carry water diverted for beneficial purposes. As life became more complicated and questions arose regarding property rights where the canals had been constructed the legislature adopted statute which provided that a prescriptive easement is created when the ditch or canal has existed for at least 20 years. Now in some cases ditches are being abandoned either because the land is no longer being irrigated or because a pipeline which replaces the ditch has been constructed. Although there is a statutory provision to create a prescriptive easement there is no mechanism identified in statute to eliminate the easement as an encumbrance on property. This bill is intended to fill that gap.

How does it Work?

- File notice of intent to abandon with the county recorder.
- Publish notice of easement abandonment in a newspaper for two weeks.
- Post notice of easement abandonment in three public places.
- Mail notice to each city and county where the easement is located.
- Publish notice on the public legal notice website.
- Wait at least 45 days.
- File notice of abandonment with the county recorder.
- Easement is abandoned.

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